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JAMES H. McKEN

Supreme Court of the United States.

October Term, 1907.

No. 1 Original.

THE STATE OF GEORGIA, BY ITS ATTORNEY-GENERAL, JOHN C. HART, PLAINTIFF,

vs.

THE TENNESSEE COPPER COMPANY AND THE DUCKTOWN SULPHUR, COPPER AND IRON COMPANY (Limited), DEFENDANTS.

IN EQUITY.

Motion for Leave to Postpone Entry of Final Decree.

JOHN C. HART,
Attorney-General of Georgia.
LIGON JOHNSON,
Solicitors for Complainant,
ATLANTA, GA.

The Franklin-Turner Company, Atlanta, Ga.

IN THE SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1907.

THE STATE OF GEORGIA, BY JOHN C. HART, ATTORNEY-GENERAL,
vs.
THE TENNESSEE COPPER CO. *et al.*
} In Equity.

Comes the State of Georgia, by John C. Hart, its Attorney-General, and respectfully represents unto the Court:

1. That on the thirteenth day of May, 1907, this honorable court delivered an opinion in the above-stated case, declaring, among other things, that "if the State of Georgia adheres to its determination, there is no alternative to issuing an injunction, after allowing a reasonable time to the defendants to complete the structures they are now building, and the efforts they are making to stop the fumes. The plaintiff may submit a form of decree on the coming in of this court in October next."

2. While the State of Georgia does stand upon her rights and adheres to her determination that the fume injury within her territory shall be remedied, it is not the desire of the State of Georgia to unduly press her rights for injunction in the premises.

3. The defendants have represented to the State of Georgia that, as speedily as possible, they are installing extensive and new plants and devices to remedy the matters complained of in this cause, and that, by reason not only of the magnitude of

the work, but the fact that the appliances are in a measure experimental, and along new lines, rebuilding, changes and alterations are required, and because of other delays, it will be impossible to fully install devices to remedy the evil complained of by the date set for the presentation of decree herein.

4. That by reason of these representations, the Legislature of the State of Georgia passed a resolution, approved the 27th day of July, 1907, which was as follows:

"No. 1.

"A joint resolution in relation to the case of the State "of Georgia, by its Attorney-General, John C. Hart, "*vs.* Tennessee Copper Company *et al.*

"WHEREAS, The Attorney-General did heretofore in- "stitute, in pursuance of authority of and direction by "the Legislature of the State of Georgia, an original "petition in the Supreme Court of the United States, "said cause sounding State of Georgia, by its Attorney- "General, John C. Hart, *vs.* Tennessee Copper Company "*et al.*, and having for its purpose the protection of the "public domain from injury and destruction caused by "poisonous fumes resulting from the smelting of copper "ores at Ducktown and Isabella, Tennessee, by the said "defendant, Copper Companies; and

"WHEREAS, Said cause has since been passed upon by "the Supreme Court of the United States adjudging the "State of Georgia in her sovereign right, was entitled "to the injunction prayed for, and if she insisted upon "her right it is the duty of the Supreme Court to enter "a decree accordingly, after giving to the Copper Com- "panies a reasonable time within which to install sul- "phuric acid plants or other appliances for eliminating "the poisonous or injurious qualities of said fumes; "therefore, be it

"*Resolved*, by the General Assembly of the State of "Georgia, That the State of Georgia through her At- "torney-General, insist upon her right to a final decree

"against an indefinite continuance of the injuries to her "public domain by the operation of said companies, but, "recognizing and fully realizing the vast interests in- "volved to the Copper Companies and to the people de- "pendent thereon, the State of Georgia feels that she "should act in a spirit of wisdom, justice and modera- "tion, and having every confidence in her Attorney- "General, the matter of final procedure is left entirely "to his discretion, we recommending that he proceed "liberally in the matter, to the end that no unnecessary "hardship shall be imposed upon the Copper Companies, "and that no unnecessary time shall be allowed them to "complete the structures that they now are building to "stop the fumes, to the damage and injury of the citi- "zens of Georgia and to her public domain.

"Approved July 27, 1907."

5. The Attorney-General of the State of Georgia during the last week of September, 1907, made a personal inspection of the plants and works of the defendants and found the representations of the defendants as to the installation of new devices and appliances and the magnitude of such undertaking to be true, and that immediate issuance of injunction would work a hardship upon the defendants and their employees and dependents which might be avoided by the allowance of additional time.

6. The State of Georgia is willing that further time, and until application of her Attorney-General herein, be allowed to the defendants to install their new plants and devices, provided complainant by such allowance shall lose none of her rights in the premises, and that by future application to this honorable court, the decree provided under the opinion herein may be entered, or, if entered previously, may become operative and final upon the Attorney-General's application.

Wherefore, complainant respectfully asks, if such procedure meets with the approval of this court, that appropriate order be entered preserving complainants' full rights herein, but postponing the entry of decree for injunction until further appli-

cation by complainant, due notice thereof to be given to defendants, or that a decree be entered in blank, which complainant is prepared to submit, to become operative and effective upon application, after due notice by complainant, as the court deems proper; otherwise that immediate decree be entered as provided for by the opinion of May 13, 1907, of this honorable court.

Respectfully submitted.

THE STATE OF GEORGIA,
By JOHN C. HART,
Attorney-General of Georgia,
LIGON JOHNSON,
Solicitors for Complainant.

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Office Supreme Court, U. S.
FILED.
FEB 27 1911
JAMES H. McKENNEY,
CLERK.

No. 1 Orig.

Terms and Stipulations of a Consent Agreement

H. A. HALL,
Attorney General of Georgia.

HOWARD CORNICK,
Attorney for Tennessee Copper Co.

IN THE SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

NO. 5, ORIGINAL.

THE STATE OF GEORGIA, *Complainant*,

vs.

THE TENNESSEE COPPER COMPANY AND THE DUCKTOWN SULPHUR, COPPER & IRON COMPANY, (LTD.)

Come now the State of Georgia by its Attorney-General, H. A. Hall, and The Tennessee Copper Company, by its attorney of record, Howard Cornick, and respectfully represent to the Court that the parties to the above entitled cause have entered into the following stipulations and agreement, to-wit:

"I. WHEREAS, on the 13th day of May, 1907, the Supreme Court of the United States in the above styled case delivered an opinion declaring among other things that, 'If the State of Georgia adheres to its determination, there is no alternative to issuing an injunction, after allowing a reasonable time to the defendant to complete the structure that they are now building and the efforts they are making to stop the fumes,' and,

II. WHEREAS, the said acid plant of the defendant, Tennessee Copper Company, costing more than $1,000,000.00 has been enlarged and just recently finished, but it is found by said defendant that it is now found necessary to expend additional sums of money estimated to be more than $100,000 in order to bring the said

acid plant up to a state of greater efficiency and perfection; and,

III. Whereas, the said defendant is unwilling to spend said additional sums of money without assurance of the opportunity to test out the efficiency of its newly finished and enlarged acid plant for several years; and,

IV. Whereas, The State of Georgia, realizing the benefits derived by the great population of her own citizens, as well as the citizens of other States and the South generally, from the continued operations of the defendant, and not desiring to unduly press her rights for injunction in the premises, is willing to allow a reasonable time to said defendant within which to test out the efficiency of said acid plant and to make corrections thereto in order to bring said acid plant up to a greater state of efficiency and perfection:

It is Therefore Agreed and Stipulated, between the complainant, State of Georgia, and the defendant, Tennessee Copper Company, as follows:

First: The Tennessee Copper Company during the growing months from May 20th to August 31st, of each of the years 1911, 1912, and 1913, shall not operate more green ore furnaces than are necessary to permit of operating its sulphuric acid plant at its normal full capacity.

Second: That on or before the 10th day of June, 1911, the Tennessee Copper Company shall make to the Attorney-General of Georgia a verified statement showing how much green ore was smelted and how much sulphuric acid was made from May 20th to May 31st, 1911, both inclusive, also on or before July 10th, 1911,

a similar verified statement shall be made to the Attorney-General covering the period from June 1st, to June 30th, 1911, both inclusive, also on or before August 10th, 1911, a similar statement covering the period from July 1st to July 31st, 1911, both inclusive; also on or before September 10th, 1911, a similar statement covering the period from August 1st to August 31st, 1911, both inclusive. Also similar reports to be made on corresponding dates to cover corresponding periods in the years 1912 and 1913, respectively.

THIRD. It is further stipulated and agreed between the parties hereto, that no other or further orders or decrees shall be applied for in this case by either party prior to the October, 1913, term of this Court. If after the October term, 1913, either party should intend to make an application for any order or decree, it will give to the other at least thirty days notice of its intention."

The premises considered, the parties hereto respectfully move the Court that the said stipulations and agreement be filed and made a part of the record in said cause, and under the terms and conditions of said agreement that said cause be postponed until the October term, 1913, of said Court, without prejudice to either party.

H. A. HALL,
Attorney-General of Georgia.

HOWARD CORNICK,
Attorney for Tennessee Copper Company.